

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
AKINA ALOHA TOURS, INC., a Hawaii)
Corporation, and AKINA BUS SERVICE,)
LTD., a Hawaii corporation,)
Complainants,)
)
vs.)
)
ROBERT'S HAWAII, INC., a Hawaii)
Corporation, and ROBERT'S TOURS AND)
TRANSPORTATION, INC., a Hawaii)
Corporation,)
Respondents.)
_____)

DOCKET NO. 03-0397

DECISION AND ORDER NO. 22211

Filed Jan. 9, 2006

At 11:40 o'clock A .M.

Karen Higash

Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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AKINA ALOHA TOURS, INC., a Hawaii)
Corporation, and AKINA BUS SERVICE,)
LTD., a Hawaii corporation,)
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vs.)
ROBERT'S HAWAII, INC., a Hawaii)
Corporation, and ROBERT'S TOURS AND)
TRANSPORTATION, INC., a Hawaii)
Corporation,)
Respondents.)
_____)

Docket No. 03-0397

Decision and Order No. 22211

DECISION AND ORDER

By this Decision and Order, the commission adopts the Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer ("Recommended Decision") regarding the complaint filed by AKINA ALOHA TOURS, INC. and AKINA BUS SERVICE, LTD. (collectively, "Akina") against ROBERT'S HAWAII, INC. and ROBERT'S TOURS AND TRANSPORTATION, INC. (collectively, "Robert's") as the commission's final decision and order in this matter.

I.

Background

A.

Complaint

Robert's is the holder of a certificate of public convenience and necessity ("CPCN") authorizing it to operate as a

common carrier of passengers by motor vehicle over irregular routes in the 1-to-7, 8-to-25, and over-25 classifications on the islands of Oahu, Maui, Kauai, and Hawaii.¹ Robert's has authority to transport passengers over regular routes on the island of Hawaii in the 8-to-25 and over-25 classifications. However, it is not authorized by the commission to operate as a motor carrier over regular routes on the island of Maui.

Akina also holds a CPCN authorizing it to operate as a common carrier of passengers by motor vehicle. Akina is authorized by the commission to provide regular and irregular route service on the island of Maui in the 1-to-7, 8-to-25, and over-25 classifications.²

Akina filed a formal complaint with the commission against Robert's on November 21, 2003, alleging that Robert's is operating a regular route service, known as the "Employee Shuttle," beyond the scope of its authority as permitted by the commission, and in violation of Hawaii Revised Statutes ("HRS") §§ 271-8, 271-12, and 271-27.³

¹Robert's Tours and Transportation, Inc., a Hawaii corporation, is a wholly owned subsidiary of Robert's Hawaii, Inc., also a Hawaii corporation. The commission granted the operating authority described above to Robert's Tours and Transportation, Inc. and not to its parent company, Robert's Hawaii, Inc.

²Akina Aloha Tours, Inc., a Hawaii corporation, is authorized to provide regular route services in the 1-to-7 passenger classification and irregular route services in the 8-to-25 passenger classification. The commission granted Akina Bus Service, Ltd., a Hawaii corporation, authority to provide regular and irregular route service in the over-25 passenger classification.

³Hawaii Administrative Rules ("HAR") § 6-61-67(a) provides that any person may file a formal complaint against any public utility,

On September 14, 2004, the commission's duly-appointed hearings officer conducted an evidentiary hearing regarding Akina's complaint against Robert's.⁴

B.

Recommended Decision

On September 1, 2005, the hearings officer issued a Recommended Decision in the above-entitled matter. That same day, the commission served the Recommended Decision upon Robert's and Akina via first class mail. In her Recommended Decision, the hearings officer recommended that the commission: (1) issue an order affirming the allegations set forth in the complaint; and (2) authorize Robert's to temporarily operate the Employee Shuttle for a period of no more than ninety (90) days from the date of the commission's final order, subject to the following conditions: (a) Robert's shall adhere to all commission rules and requirements during the ninety (90)-day period; (b) prior to the expiration of the ninety (90)-day period, Robert's shall apply for the requisite approvals from the commission to operate the Employee Shuttle service in accordance with Chapter 271, HRS; and (c) if Robert's fails to apply for authority to operate the Employee Shuttle within the ninety (90)-day period, it may be subject to civil penalties, cease and desist orders, order to show cause proceedings, or the issuance of citations, as authorized by law.

water carrier, motor carrier, or other person subject to commission jurisdiction.

⁴HAR § 6-61-70 requires that the commission set a hearing on

C.

Akina's Exceptions⁵

On September 14, 2005, Akina filed written exceptions to the Recommended Decision.⁶ In its Exceptions, Akina asserts that the relief to which it is entitled will not be granted if the terms of the Recommended Decision are implemented as presently stated and if Robert's is not enjoined from continuing to operate the Employee Shuttle as requested by Akina. Akina argues that it will "suffer further losses" if it is "deprived of the protection of the [commission] concerning its regular route authority."⁷

In particular, Akina contends that the facts do not support Conclusion of Law Number 4 and that the facts and the law do not support or allow the recommendations contained in Recommended Decision and Order Number 2. Akina argues that Conclusion of Law Number 4, which states that it would not be in

the complaint when a respondent has filed its answer.

⁵If exceptions to a hearings officer's recommended decision are filed, upon the filing of briefs and presentation of any oral argument, the commission may render its decision upon the record or it may reopen the hearing and take further evidence or may make other disposition of the case that it deems just and reasonable, pursuant to HAR § 6-61-133.

⁶[Akina's] Exceptions to the Recommended Decision and Order of Hearings Officer and Brief; Certificate of Service, filed on September 14, 2005 ("Akina's Exceptions").

Parties have ten (10) working days after service of the Recommended Decision to file exceptions to the Recommended Decision, pursuant to HAR § 6-61-130. HAR § 6-61-21(e) requires that two (2) days be added to a prescribed period when a notice or document is served upon a party by mail.

⁷Akina's Exceptions, at 3.

the public interest to order Robert's to cease and desist from operating the Employee Shuttle, is erroneous since Akina presently has regular route authority to service the passengers who are riding the Employee Shuttle and has the facilities to service those passengers.

Akina further states that Recommended Decision and Order Number 2, which recommends that the commission provide Robert's with temporary authority to operate the Employee Shuttle for a period of ninety (90) days, should be rejected. Akina argues that its ability to provide regular route authority should be protected, and requests that the commission modify the Recommended Decision to: (1) assess a civil penalty against Robert's for the unlawful provision of services, and (2) order Robert's to immediately cease and desist the operation of the Employee Shuttle.

D.

Robert's Exceptions

On September 16, 2005, Robert's filed exceptions to the Recommended Decision.⁸ Robert's argues that the Recommended Decision "should not be adopted because it is (1) clearly erroneous, (2) conflicts with the prior decision of the [commission] in this case, wherein it held that the

⁸[Robert's] Exceptions to Findings of Fact, Conclusions of Law and Recommended Decision and Order of Hearings Officer Dated September 1, 2005; Exhibit Nos. 1 to 3; and Certificate of Service, filed on September 16, 2005 ("Robert's Exceptions").

Employee Shuttle was an authorized irregular route, (3) is contrary to the [c]ommission's established decisions and orders in factually similar cases, and (4) is not based on the proper factual foundation and/or are based on facts not in evidence."⁹ Robert's asserts that the hearings officer's Recommended Decision lacks "any factual foundation," and suggests that the commission "should have sent its investigators into the field to observe Robert's operation of its Employee Shuttle and provide independent evidence as to whether or not Robert's Employee Shuttle was providing regular route service."¹⁰ Robert's contends that Akina is "misusing the administrative process by attempting to leverage an adverse opinion against Robert's," and alleges that Akina's primary purpose for filing the complaint was to obtain a decision against Robert's so it could amend its existing complaint in a pending civil suit.¹¹

Robert's specifically contests Findings of Fact Numbers 3, 4, and 6, Conclusion of Law Number 4, and the Recommended Decision and Order Number 2. Findings of Fact Number 3, which describes Robert's Employee Shuttle as one that contains "stops at fixed termini, that are systematic, periodical, scheduled, premeditated, planned and regular,"¹² is contested by Robert's because it contends that the service does not stop at any

⁹Robert's Exceptions, at 1-2 (footnote and parenthetical notation omitted).

¹⁰Id. at 2-3.

¹¹Id. at 3.

¹²Recommended Decision, at 4.

fixed termini, is a "drop-off" service that varies daily depending on the passengers' requests, and does not allow passengers to disembark and re-board at their convenience.

Robert's objects to Findings of Fact Number 4, which details the Employee Shuttle's daily pick-up and drop-off points, since the stated schedule is an "unpublished and unestablished schedule that was not adopted or followed by Robert's."¹³

Findings of Fact Number 6, which states that Robert's request for informal commission opinion did not include a schedule of the Employee Shuttle, is contested by Robert's as irrelevant. Robert's states that the service described by Robert's in its informal opinion request accurately described the services that were and are being provided.

Robert's states that the hearings officer erroneously concluded in Conclusion of Law Number 4 that the Employee Shuttle is a regular route. Robert's believes that reliance on its internally prepared schedule does not support such a conclusion.

Robert's takes exception to the Recommended Decision and Order to the extent that it recommends that the commission affirm the allegations set forth in Akina's complaint. Robert's also takes exception to Recommended Decision and Order Number 2, which recommends that Robert's be required to apply for the requisite authority to operate the Employee Shuttle, since it contends that it is not operating unlawfully.

Robert's requests that the commission reject the hearings

¹³Robert's Exceptions, at 7.

officer's Recommended Decision and dismiss the complaint against Robert's. In the alternative, Robert's suggests that the commission reopen the hearing and consider additional evidence that may be brought by the commission's investigators.

E.

Akina's Opposition to Robert's Exceptions

On September 30, 2005, Akina filed a brief opposing Robert's Exceptions.¹⁴ In its Opposition to Robert's Exceptions, Akina notes that there is no requirement that the commission reopen a hearing to investigate the facts alleged in the complaint, as Robert's suggests. In addition, Akina denies the allegation by Robert's that Akina is misusing the administrative process by filing a complaint against it. Akina states that the facts presented during the hearing and the recommendations of the hearings officer demonstrate that it had a valid basis for bringing the actions of Robert's to the attention of the commission. Akina further notes that the Commission's rules at HAR § 6-61-67 provides for such a formal complaint process. Akina argues that the facts and legal authorities cited in its Opposition to Robert's Exceptions support the hearings officer's Recommended Decision.

¹⁴[Akina's] Brief Opposing Robert's Exceptions to Findings of Fact, Conclusions of Law and Recommended Decision and Order of Hearings Officer and Brief; Certificate of Service, filed on September 30, 2005 ("Akina's Opposition to Robert's Exceptions").

A party may file a brief opposing exceptions taken to a hearings officer's Recommended Decision within ten (10) working days after being served with the exceptions, pursuant to

II.

Findings and Conclusions

The issue presented by Akina's complaint is whether Robert's Employee Shuttle is a "regular route" service, pursuant to HAR § 6-61-79(2), causing Robert's to operate beyond its operating authority and in violation of HRS §§ 271-8 and 271-12. HAR § 6-61-79(2) describes "regular route" authority as a "service that traverses over a fixed route with no deviation, with stops at fixed termini and on a time schedule, whether daily or hourly."

HRS § 271-8 provides that "no person shall engage in the transportation of persons or property, for compensation or hire, by motor vehicle, over any public highway of this State unless there is in force with respect to the person a certificate or permit issued by the [commission] authorizing the transportation." HRS § 271-12(a) similarly prohibits the provision of common carrier by motor vehicle service on any public highway in the State "unless there is in force with respect to such carrier a [CPCN] issued by the [commission] authorizing such operation."

Despite Robert's assertion that its Employee Shuttle does not stop at any fixed termini, is a "drop-off" service that varies daily depending on the passengers' requests, and does not allow passengers to disembark and re-board at their convenience, the commission is persuaded, based upon the evidence in the record, including the schedule prepared by Robert's, that the service by its nature must run on a daily schedule, on a fixed route (from

Kahului to Kapalua and then back again) without deviation, at fixed stops. Thus, the commission agrees with the hearings officer's conclusion that the Employee Shuttle is a regular route service, and that Robert's is providing such service without authority.

Upon a review of the entire record, the commission finds that the hearings officer's findings of fact and conclusions of law are appropriate, well-reasoned, and supported by the evidence contained in this proceeding. Therefore, the commission adopts the hearings officer's Recommended Decision.

The commission agrees that the facts set forth in Conclusion of Law Number 4, including the receipt of a non-binding, informal staff opinion on the matter, constitute mitigating evidence justifying the hearings officer's failure to impose a civil penalty upon Robert's. Moreover, the commission believes that the public interest requires that Robert's be given a period of time in which to seek authority to provide such service.

Therefore, pursuant to HRS § 269-6, the commission concludes that the Recommended Decision regarding Akina's complaint, attached hereto as Exhibit A, should be adopted as the commission's final decision and order in this matter.

III.

Orders


THE COMMISSION ORDERS:

1. The Recommended Decision regarding Akina's complaint, attached hereto as Exhibit A, is adopted as the commission's final decision and order in this matter.

2. This docket is closed unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii JAN - 9 2006.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

03-0397.rpr

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

AKINA ALOHA TOURS, INC., a Hawaii Corporation, and AKINA BUS SERVICE LTD., a Hawaii Corporation)	
)	
Complainants,)	DOCKET NO. 03-0397
)	
v.)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW, AND
)	RECOMMENDED DECISION
ROBERT'S HAWAII, INC. a Hawaii Corporation, and ROBERT'S TOURS AND TRANSPORTATION, INC., a Hawaii Corporation,)	AND ORDER OF
)	HEARINGS OFFICER
)	
Respondents.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED DECISION AND ORDER OF HEARINGS OFFICER

By this Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer ("Recommended Decision"), and pursuant to Hawaii Administrative Rules ("HAR") § 6-61-129, the commission affirms the formal complaint ("Complaint") of AKINA ALOHA TOURS, INC. and AKINA BUS SERVICE, LTD. (collectively, "Akina" or "Complainant") against ROBERT'S HAWAII, INC. and ROBERT'S TOURS AND TRANSPORTATION, INC. (collectively, "Robert's" or "Respondent") (together with Akina, the "Parties"),¹ and finds that Robert's has been operating a regular route service, in violation of the provisions of chapter 271 Hawaii Revised Statutes ("HRS").

¹Akina's Complaint, filed November 21, 2003.

I.

Procedural History

On November 21, 2003, Akina filed a Complaint with the commission, pursuant to HAR §§ 6-61-67 and 6-68-13, alleging violations by Robert's of HRS §§ 271-8, 271-12 and 271-27. In its Complaint, Akina alleges that Robert's operates a regular route service, known as the "Employee Shuttle", in violation of the authority granted it by the commission.

By Order No. 20730, filed on January 5, 2004, the commission ordered Robert's to file an answer to the Complaint. On January 26, 2004, Robert's filed a timely answer to the Complaint ("Answer"), pursuant to HAR § 6-61-68.² Also on January 26, 2004, Robert's filed a motion to dismiss the Complaint and memorandum in support of the motion ("Motion to Dismiss").

On March 8, 2004, Akina submitted a memorandum in opposition to the Motion to Dismiss ("Memorandum in Opposition"). On March 15, 2004, Robert's filed a request for leave to reply to complainant's Memorandum in Opposition and reply to complainant's Memorandum in Opposition ("Request for Leave to Reply").

By a Notice of Hearing filed on May 4, 2004, the commission notified the Parties and the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs that a hearing would be held on the Motion to Dismiss on June 3, 2004 in Wailuku, Maui.

²Robert's was ordered to file an answer within twenty (20) days of the filing of Order No. 20730.

By Order No. 21300, filed on August 12, 2004, the commission granted Robert's Request for Leave to Reply to Akina's Memorandum in Opposition and dismissed Robert's Motion to Dismiss. Additionally, the commission scheduled a hearing on the Complaint, to be held on September 21, 2004 and appointed this hearings officer to preside over the hearing.

On September 14, 2004, a telephone pretrial conference between the Parties and this hearings officer was held to discuss the scope, timing, and other details of the hearing.

On September 21, 2004, at 10:00 a.m., an evidentiary hearing on the Complaint was held at the State Office Building in Wailuku, Maui ("Hearing"). Representing Robert's was Mr. George Kahunu, Jr., Special Project Manager for Robert's. Representing Akina was Mr. James Richard McCarty, Esq. and Ms. Ruby A. Hamili, Esq.

II.

Issue

The issue presented by Akina's Complaint is as follows: Whether Robert's Employee Shuttle services, as described in the Hearing, constitutes a "regular route" as contemplated in HAR § 6-61-79(2), causing Robert's to be in violation of HRS §§ 271-8 and 271-12.

III.

Findings of Fact

1. On the island of Maui, Robert's is the holder of a certificate of public convenience and necessity ("CPCN") authorizing it to operate as a common carrier of passengers, by motor vehicle, over irregular routes, in the 1-to-7, 8-to-25, and over-25 passenger classifications.³

2. On the island of Maui, Robert's is not authorized by the commission to operate as a motor carrier over regular routes.

3. Robert's has been operating the Employee Shuttle since January 1, 1987.⁴ The Employee Shuttle service is described as a passenger transportation service commencing daily at 6:30 a.m. with employee pickups from the War Memorial in Kahului and Waikapu Store in Wailuku, and dropping off employees at hotels in Kaanapali, Na Pili and Kapalua, and returning daily, in reverse order at 4:00 p.m., with stops at fixed termini, that are systematic, periodical, scheduled, premeditated, planned and regular.⁵

³This hearings officer takes administrative notice of the documents on file with the commission relating to Complainant and Respondent.

⁴Transcript of Hearing ("Transcript") at 48.

⁵Transcript at 48-49.

4. The Employee Shuttle runs daily as follows:⁶

<u>Area</u>	<u>Pick-up Point</u>	<u>AM</u>
Kahului	War Memorial	6:30
Wailuku	Waikapu Store	6:40

<u>Area</u>	<u>Drop-off Point</u>	
Kaanapali	Royal Lahaina	7:15
	Sheraton Maui	7:20
	Kaanapali Beach Hotel	7:25
	The Whaler	7:25
	Westin Maui	7:25
	Maui Marriot	7:25
	Hyatt Regency Maui	7:25
Napili	Napili Shores	7:45
Kapalua	Ritz Carlton	7:50

	<u>Pick-up Point</u>	<u>PM</u>
Kapalua	Ritz Carlton	4:00
Napili	Napili Shores	4:10
Kaanapali	Royal Lahaina	4:30
	Sheraton Maui	4:30
	Kaanapali Beach Hotel	4:30
	The Whaler	4:30
	Westin Maui	4:30
	Maui Marriot	4:30
	Hyatt Regency Maui	4:40

⁶Complainant's Exhibit C-1.

<u>Area</u>	<u>Drop-off Point</u>	<u>PM</u>
Wailuku	Waikapu Store	5:15
Kahului	War Memorial	5:35

5. By letter dated May 21, 2003, Robert's requested an informal opinion from the commission regarding whether its Employee Shuttle was authorized under Robert's present irregular route authority ("Request for Informal Opinion").⁷

6. Robert's Request for Informal Opinion did not include a schedule of the Employee Shuttle, as shown above in Findings of Fact 4.

7. By letter to Robert's dated May 29, 2003 ("Informal Opinion"), the commission opined that the Employee Shuttle, as described in the Request for Informal Opinion, could be operated under Robert's existing irregular route authority on the island of Maui.⁸

8. The commission informed Robert's that the Informal Opinion is not binding on the commission, and is based only on the facts presented by Robert's in its Request for Informal Opinion, and that should Robert's want a binding, formal opinion, a petition for a declaratory order, pursuant to HAR, Chapter 6-61, Subchapter 16 should be filed.⁹

⁷Robert's Exhibit HE-2.

⁸Robert's Exhibit HE-3.

⁹Id.

9. Robert's did not petition the commission for a formal declaratory ruling regarding the Employee Shuttle.¹⁰

IV.

Conclusions of Law

Based on the foregoing findings of fact, this hearings officer makes the following conclusions of law. Any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

1. HRS § 271-8 provides that, unless a person is operating within a qualified exemption pursuant to HRS § 271-5, no person shall engage in the transportation of persons or property by motor vehicle, for compensation or hire, over any public highway of the State of Hawaii ("State"), unless the person is authorized to provide such transportation by either a certificate or permit issued by the commission.

2. HRS § 271-12 provides that no person shall engage in the business of a common carrier by motor vehicle on any public highway in the State unless there is in force, with respect to such common carrier, a certificate of public convenience and necessity issued by the commission, authorizing such operation.

¹⁰Transcript at 53.

3. HAR § 6-61-79 defines "regular route" as a "service that traverses over a fixed route with no deviation, with stops at fixed termini and on a time schedule, whether daily or hourly".

4. Robert's asserts that its Employee Shuttle is not regular route service, and thus, can be operated under its present authority.¹¹ Based upon the foregoing, this hearings officer concludes that Robert's Employee Shuttle is a regular route, as defined by HAR § 6-61-79. Thus, this hearings officer concludes that Robert's Employee Shuttle is in violation of HRS §§ 271-8 and 271-12. Evidence presented at the Hearing, including, without limitation, the Employee Shuttle schedule (Findings of Fact 4) clearly demonstrated that Robert's Employee Shuttle runs on a daily schedule, on a fixed route with no deviation, at fixed stops.

Unlike point-to-point service as described in Docket No. 96-0189, the Employee Shuttle, by its very nature, must run on a fixed schedule and fixed route, with no deviation in route, to meet the transportation and work schedule needs of the hotel employees at the various hotels along the Employee Shuttle route. People rely on the fixed route and daily schedule. A point-to-point service may take any route, as long as it gets from "point A" to "point B". Unlike the Employee Shuttle, point-to-point service is not affected if a fixed route cannot be used. And although a point-to-point

¹¹See Mr. Kahanu's discussion at 18-23 of Transcript.

service may run on certain fixed day, times or routes, it is not critical that it do so.^{12,13}

Although the record indicates that Robert's has been operating the Employee Shuttle since 1987, this hearings officer also finds that Robert's at least attempted, in good faith, in 2003, to obtain an informal commission opinion as to whether the Employee Shuttle could be operated within its existing irregular route authority on the island of Maui. In hindsight, however, this hearings officer believes that Robert's could have, or should have described and disclosed all of the relevant facts and circumstances surrounding the Employee Shuttle (e.g., the actual shuttle schedules obtained in this proceeding) in obtaining its informal opinion and, at the very minimum, obtained a declaratory ruling from the commission on this matter prior to operating the

¹²See Robert's' Exhibit HE-5, Decision and Order No. 14788, filed on July 10, 1996 in Docket No. 96-0189 ("Trans Hawaiian Airport Shuttle") for a discussion of the difference between point-to-point service and regular route service. In denying Trans Hawaiian - Oahu, Inc.'s application for temporary regular route authority, the commission noted that the Trans Hawaiian Airport Shuttle was "designed to transport arriving or departing visitors directly between their hotels in Waikiki . . . and the airport, as distinguished from a regular route, or transit service, which has multiple scheduled stops all along a fixed route, where passengers are expected to disembark and reboard at their convenience". Trans Hawaiian Airport Shuttle at 2. The commission noted that the Airport Shuttle could be run under Trans Hawaiian's existing irregular route authority. The commission also noted that any deviation from the fixed route in the Airport Shuttle would not affect the service, i.e., alternate routes between Waikiki and the Airport can be used.

¹³Mr. Kahanu's testimony arguing that Robert's charter to Germaine's Luau is regular service provided under its irregular authority misrepresents the service. Transportation service to Germaine's Luau, or any other tourist attraction, is a charter service designed to transport people to a certain attraction. It is not a regular route under the definition of HAR § 6-61-79.

Employee Shuttle since 1987. Nonetheless, this hearings officer concludes that the facts, noted above, constitute sufficient mitigating evidence to justify that no civil penalty¹⁴ be assessed against Robert's for violating HRS §§ 271-8 and 271-12.

This hearings officer also concludes that because the Employee Shuttle has been operating since 1987, it would not be in the public interest, particularly for those passengers relying on such transportation services on a day-to-day basis, to order Robert's to cease and desist from such services. In lieu of civil penalties and cease and desist orders, this hearings officer makes certain recommendations, as discussed in more detail in Section V., below.

V.

Recommended Decision and Order

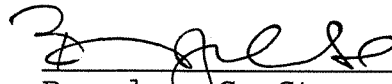
1. Based upon the foregoing, this hearings officer recommends that the commission issue an order AFFIRMING the allegations set forth in the Complaint consistent with the terms set forth in this Recommended Decision.

2. As discussed in Section IV. above, regarding Robert's mitigating evidence, this hearings officer recommends that the commission should temporarily authorize Robert's to operate the Employee Shuttle for no more than a period of ninety (90) days from the date of the commission's final order in

¹⁴Pursuant to HRS § 271-27(h), the commission is authorized to impose upon Respondent a civil penalty in the sum of up to \$1,000 for each offense; and in the case of a continuing violation, not less than \$50 and not more than \$500 for each additional day during which the failure or refusal continues.

this matter subject to the following conditions: (1) Robert's shall adhere to all commission rules and requirements during the ninety (90) day period; (2) prior to the expiration of the ninety (90) day period, Robert's shall have applied for the requisite approvals from the commission to operate the Employee Shuttle service in accordance with HRS Chapter 271; and (3) if Robert's fails to apply for the requisite authority to operate the Employee Shuttle within the ninety (90) day period, it may be subject to civil penalties, cease and desist orders, order to show cause proceedings, or the issuance of citations, as authorized by law.

DONE at Honolulu, Hawaii SEP - 1 2005.



Benedyne S. Stone
Hearings Officer
Public Utilities Commission

03-0397.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

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Kihei, HI 96753

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Honolulu, HI 96817

ROBERT'S TOURS AND TRANSPORTATION, INC.
680 Iwilei Road, Suite 700
Honolulu, HI 96817



Karen Higashi

DATED: SEP - 1 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22211 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

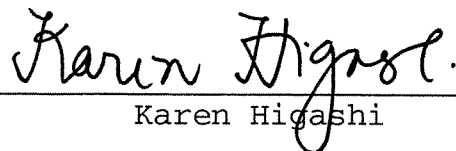
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ROBERT'S TOURS & TRANSPORTATION, INC.
680 Iwilei Road, Suite 700
Honolulu, HI 96817



Karen Higashi

DATED: JAN - 9 2006